CORRECTED COPY

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
LIND, KRAUSS, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee
v.
Private First Class QUAASHIE M. WILLIAMS
United States Army, Appellant

ARMY 20130139

Headquarters, 7th Infantry Division
Stefan R. Wolfe, Military Judge
Lieutenant Colonel Michael S. Devine, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Lieutenant Colonel Peter Kageleiry, Jr., JA; Major Vincent T. Shuler, JA; Major Daniel E. Goldman, JA (on brief); Colonel Kevin Boyle, JA; Lieutenant Colonel Charles Lozano, JA; Major M. Patrick Gordon, JA; Major Daniel E. Goldman, JA (on reply brief).

For Appellee: Colonel John P. Carrell, JA; Major John K. Choike, JA (on brief).

26 November 2014

SUMMARY DISPOSITION

Per Curiam:

A military judge sitting as a special court-martial convicted appellant, pursuant to his pleas, of one specification of absence without leave (AWOL) for more than 30 days terminated by apprehension in violation of Article 86, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. §886 (2012).[*] The military

[*] Appellant was originally charged with one specification of desertion terminated by apprehension in violation of Article 85, UCMJ, 10 U.S.C. §885 (2012). Appellant pleaded not guilty to desertion, but guilty to the lesser-included offense of absence without leave terminated by apprehension. The military judge announced his findings as follows: "To the lesser[-]included offense of AWOL, terminated by apprehension, excepting the words 'and with the intent to remain away from permanently,' and excepting the words 'in desertion': Guilty." Although the judge did not enter a finding of not guilty to the excepted words or to the Article 85,

(continued . . .)

judge sentenced appellant to a bad-conduct discharge, confinement for ninety days, forfeiture of $900.00 pay per month for six months, and reduction to the grade of E-1. The convening authority approved the adjudged sentence and credited appellant with eight days against the sentence to confinement.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises two assignments of error, both of which merit discussion, but no relief.

Appellant asks this court to provide sentence relief as a result of the excessive post-trial delay in the processing of his case. In reviewing issues of unreasonable post-trial delay, we first look to the length of the delay. *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). The total post-trial processing time between sentence and action for this 94-page record was 245 days. *See id.* at 142 (recognizing "a presumption of unreasonable delay . . . . where the action of the convening authority is not taken within 120 days of the completion of trial). An additional 64 days elapsed between initial action and this court's receipt of the record of trial. *See id.* (applying "a similar presumption of unreasonable delay for [cases] . . . where the record of trial is not docketed by the service Court of Criminal Appeals within thirty days of the convening authority's action").

Reviewing the remaining *Moreno* factors, appellant himself was responsible for 94 days of the delay between sentence and action: 28 days more than the trial counsel to complete the errata for the 94-page record and a 66-day extension to submit his Rule for Courts-Martial [hereinafter R.C.M.] 1105 matters. *See id.* at

---

(. . . continued)
UCMJ, charge and specification, our review of the record leads us to conclude that the judge's failure to do so was an oversight and that all of the parties understood that appellant was found not guilty of desertion, but guilty of the lesser-included offense of AWOL. *See United States v. Perkins*, 56 M.J. 825, 827 (Army Ct. Crim. App. 2001) ("The announcement of a verdict 'is sufficient if it decides the questions in issue in such a way as to enable the court intelligently to base judgment thereon and can form the basis for a bar to subsequent prosecution for the same offense.'" (quoting *United States v. Dilday*, 47 C.M.R. 172, 173 (A.C.M.R. 1973))). Appellant's pretrial agreement conformed with his pleas of not guilty to desertion, but guilty to the lesser-included offense of AWOL; the trial counsel informed the military judge that the government did not intend to prove up the greater offense of desertion; the providence inquiry focused solely on the lesser-included offense of AWOL; and the military judge in his findings "except[ed]" the desertion language from The Specification of the Charge. Finally, the report of the result of trial correctly reflected that appellant was found not guilty of desertion, but guilty of the lesser-included offense of AWOL. The promulgating order will be corrected accordingly.

136-38. The government provided a contemporaneous explanation for the delay between sentence and action and subsequently submitted as an appellate exhibit an explanation for the delay between action and receipt of the record by this court. *See id.* Appellant made no demand for speedy post-trial processing and did not complain until his current appeal. *See id.* at 138. Finally, appellant has not demonstrated any prejudice resulting from the delay. *See id.* at 138-41.

Though we find no prejudice, the court must still review the appropriateness of the sentence in light of the lengthy post-trial processing. UCMJ art. 66(c); *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) ("[Pursuant to Article 66(c), UCMJ, service courts are] required to determine what findings and sentence 'should be approved,' based on all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay."). Upon review of the entire record, to include the unreasonable delay and the government's explanations, we find appellant's approved sentence is appropriate.

Appellant also complains that his "efforts to obtain clemency were unfairly prejudiced" because the staff judge advocate failed to correct "material inconsistencies" in appellant's R.C.M. 1105 submissions. Specifically, appellant's R.C.M. 1105 matters erroneously stated that appellant was convicted of desertion. We find this assignment of error to be without merit. The record reflects that the staff judge advocate properly advised the convening authority of the correct offense of which appellant was convicted. Prior to taking action in appellant's case, the convening authority reviewed as enclosures to the staff judge advocate's recommendation: (1) the report of result of trial, which stated appellant was convicted of AWOL, and (2) the pretrial agreement the convening authority had signed in which appellant agreed to plead not guilty to desertion, but guilty to the lesser-included offense of AWOL. We have no doubt that the convening authority was adequately informed of appellant's conviction of AWOL, therefore, appellant has not established a colorable showing that he was possibly prejudiced by his own errant reference to desertion in the R.C.M. 1105 matters he submitted. *See generally United States v. Wheelus*, 49 M.J. 283 (C.A.A.F. 1998).

CONCLUSION

The findings of guilty and the sentence are AFFIRMED.

FOR THE COURT:

MALCOLM H. SQUIRES, JR.
Clerk of Court